THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Amendment of Rules 208(f) and 214(d) of the Pennsylvania Rules of Disciplinary Enforcement; No. 26 Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 5th day of March, 2004, Rules 208(f) and 214(d) of the Pennsylvania Rules of Disciplinary Enforcement are amended to read as follows.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin* and shall govern all matters thereafter commenced and, insofar as just and practicable, matters then pending.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 208. Procedure.

* * * * *

(f) *Emergency temporary suspension orders and related relief.*

* * * * *

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel **and the Secretary of the Board**. A hearing on the petition **before a member of the Board designated by the Chair of the Board** shall be held within ten **business** days **[before a member of the Board designated by the Chairman of the Board] after service of the petition on the Secretary of the Board**. The designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five **business** days after the conclusion of the hearing. Upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

* * * * *

Rule 214. Attorneys convicted of crimes.

* * * * *

(d)(1) Upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a serious crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

* * * * *

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel **and the Secretary of the Board**. A hearing on the petition **before a member of the Board designated by the Chair of the Board** shall be held within ten **business** days **[before a member of the Board designated by the Chairman of the Board] after service of the petition on the Secretary of the Board**. The designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five **business** days after the conclusion of the hearing. Upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

* * * * *

[Pa.B. Doc. No. 04-467. Filed for public inspection March 19, 2004, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 4, 5, 7 AND 9]

Order Rescinding Rules 113, 574, and 577; Promulgating New Rules 113, 116, and 577; Amending Rules 103, 114, 142, 456, 535, 536, 571, 572, 573, 575, 576, 579, 581, 587, 720, 903, and 906; and Approving the Revision of the Comments to Rules 451 and 721; No. 303 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the changes to the Rules of Criminal Procedure governing motions and answers, and orders and court notices in criminal cases that were adopted on March 3, 2004, effective July 1, 2004. These rule changes, which are the culmination of several years of work by the Committee undertaken to address the problems caused by the proliferation of local rules and the lack of uniformity in procedures in the important area of motions practice in criminal cases that have hindered the statewide practice of law, clarify the procedures in criminal cases governing motions, answers, orders, and court notices, achieve greater statewide uniformity in criminal motions practice, and eliminate the local rules and practices governing motions practice that are hampering the statewide practice of law. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 3rd day of March, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the

proposal having been published before adoption at 28 Pa.B. 5869 (December 5, 1998) and 31 Pa.B. 6784 (December 15, 2001), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 720 and 785), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Rules of Criminal Procedure 113, 574, and 577 are hereby rescinded;

(2) new Rules of Criminal Procedure 113, 116, and 577 are hereby promulgated;

(3) Rules of Criminal Procedure 103, 114, 142, 456, 535, 536, 571, 572, 573, 575, 576, 579, 581, 587, 720, 903, and 906 are hereby amended; and

(4) the revisions of the Comments to Rules of Criminal Procedure 451 and 721 are hereby approved

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2004.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

* * * * *

CARRIER SERVICE includes, but is not limited to, delivery by companies such as Federal Express or United Parcel Service, or a local courier service, and courthouse interoffice mail. The courthouse interoffice mail is a method of delivery used in some judicial districts for transmittal of documents between offices in the courthouse, and between the courthouse and other county facilities, including the county jail facility.

CLERK OF COURTS is that official**, without regard to that person's title,** in each judicial district who**, pursuant to 42 §§ 2756 and 2757,** has the responsibility and function **[under state or local law]** to maintain the official criminal **[court] case** file and **[docket, without regard to that person's official title] list of docket entries, and to perform such other duties as required by rule or law**.

* * * * *

COURT ADMINISTRATOR is that official in each judicial district who has the responsibility for case management and such other responsibilities as provided by the court.

* * * * *

MOTION includes any challenge, petition, application, or other form of request for an order or relief.

* * * * *

Official Note: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments defining carrier service, clerk of courts, court administrator, and motion published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 113. **[Notice of Court Proceeding(s) Requiring Defendant's Presence] (Rescinded)**.

[Notice of a court proceeding requiring a defendant's presence shall be either:

(1) in writing and served by

(a) personal delivery to the defendant or defendant's attorney; or

(b) leaving a copy for or mailing a copy to the defendant's attorney at the attorney's office; or

(c) sending a copy to the defendant by certified, registered, or first class mail addressed to the defendant's place of residence, business, or confinement; or

(2) given to the defendant orally in open court on the record.

Comment

Some judicial districts use a document called a "subpoena" to give a defendant notice of required court appearances. Nothing in this rule is intended to change this practice.

See Rule 577 for the procedures for serving all written motions and any document for which filing is required.

See Rule 451 for the procedures for service in summary cases.]

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001**; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rescission of the rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 113. Criminal Case File and Docket Entries.

(A) The clerk of courts shall maintain the criminal case file for the court of common pleas. The criminal case file

shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records, papers, orders, and copies shall not be taken from the custody of the clerk or court without order of the court. Upon request, the clerk shall provide copies at reasonable cost.

(B) The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the criminal case file and of all proceedings in the case.

(C) The docket entries shall include at a minimum the following information:

(1) the defendant's name;

(2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, and the date of any withdrawal of appearance;

(3) notations concerning all papers filed with the clerk, including all court notices, appearances, pleas, motions, orders, verdicts, findings and judgments, and sentencings, briefly showing the nature and title, if any, of each paper filed, writ issued, plea entered, and motion made, and the substance of each order or judgment of the court and of the returns showing execution of process;

(4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;

(5) a notation of every judicial proceeding, continuance, and disposition;

(6) the location of exhibits made part of the record during the proceedings; and

(7) all other information required by Rules 114 and 576.

Comment

This rule sets forth the mandatory contents of the list of docket entries and the criminal case files. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a criminal case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings. The clerk of courts is required to make docket entries at the time the information is made known to the clerk, and the practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas at any stage of a criminal case.

The requirement in paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any litigant in the case. The requirement also ensures that attorneys are served as required in Rules 114 and 576. See also Rule 576(B)(4) concerning certificates of service.

In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required in paragraph (C)(2) must include the facsimile number or electronic address.

Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus pretrial motions (Rule 578), motions for a mistrial (Rule 605), motions for changes in bail (Rule 529), and oral motions for extraordinary relief (Rule 704(B)).

Official Note: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 114. **[Notice and Docketing of Orders] Orders and Court Notices: Filing; Service; and Docket Entries**.

[Upon receipt of an order from a judge, the clerk of courts shall immediately docket the order and record in the docket the date it was made. The clerk shall forthwith furnish a copy of the order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.]

(A) Filing

(1) All orders and court notices promptly shall be transmitted to the clerk of courts' office for filing. Upon receipt in the clerk of courts' office, the order or court notice promptly shall be time stamped with the date of receipt.

(2) All orders and court notices promptly shall be placed in the criminal case file.

(B) Service

(1) A copy of any order or court notice promptly shall be served on each party's attorney, or the party if unrepresented.

(2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

(3) Methods of Service

Service shall be:

(a) in writing by

(i) personal delivery to the party's attorney or, if unrepresented, the party; or

(ii) personal delivery to the party's attorney's employee at the attorney's office; or

(iii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office; or

(iv) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the

party's attorney in the box in the courthouse assigned to the attorney for service; or

(v) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(vi) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or

(vii) delivery to the party's attorney, or the party if unrepresented, by carrier service; or

(b) orally in open court on the record.

(C) Docket Entries

(1) Docket entries promptly shall be made.

(2) The docket entries shall contain:

(a) the date of receipt in the clerk's office of the order or court notice;

(b) the date appearing on the order or court notice; and

(c) the date and manner of service of the order or court notice.

(D) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to file or serve orders or court notices.

Comment

[The rule makes it clear that the notice and recording procedures are mandatory and may not be modified by local rule.]

This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of receipt, date appearing on the order or notice, and the date and manner of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence).

Historically, some orders or court notices have been served by the court administrator or by the court. Paragraph (B)(2) permits the president judge to continue this practice by designating either the court or the court administrator to serve orders and court notices. When the president judge makes such a designation, the designation must be in the form of a local rule promulgated in compliance with Rule 105 (Local Rules).

Paragraph (C)(2) requires three dates to be entered in the list of docket entries with regard to the court's orders and notices: the date of receipt of the order or notice; the date appearing on the order or notice; and the date the order or notice is served. The date of receipt is the date of filing under these rules. Concerning appeal periods and entry of orders, see Rule 720 (Post-Sentence Procedures; Appeal) and Pa.R.A.P. 108 (Date of Entry of Orders).

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the defendant's presence.

Although paragraph (B)(3)(a)(iv) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(vi). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization must be filed in each case the party or attorney wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping or making docket entries.

Under the post-sentence motion procedures, the clerk of courts must comply with this rule after entering an order denying a post-sentence motion by operation of law. See Rule 720(B)(3)(c).

[As used in this rule, "clerk of courts" is intended to mean that official in each judicial district who has the responsibility and function under state or local law to maintain the official court file and docket, without regard to that person's official title.]

This rule makes it clear that the procedures for filing and service, and making docket entries are mandatory and may not be modified by local rule.

Paragraph (D), titled "Unified Practice," emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

For the definition of "carrier service," see Rule 103.

See Rule 103 for the definitions of "clerk of courts" and "court administrator."

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Official Note: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; **amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rule changes concerning filing and service, making docket entries, and orders and court notices published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 116. General Supervisory Powers of President Judge.

The President Judge shall be responsible for ensuring that the judicial district is in compliance with the Pennsylvania Rules of Criminal Procedure, other rules, and statutes, applicable to the minor judiciary, courts, clerks of courts, and court administrators.

Comment

By this rule, the Supreme Court is imposing on the president judges the responsibility of supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure, other rules, and statutes.

See 42 Pa.C.S. §§ 2756 and 2757 concerning the duties of the clerks of courts.

Official Note: Adopted March 3, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining new Rule 116 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

PART D. Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia

Rule 142. Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt.

(A) If a contemnor defaults on the payment of a fine imposed as punishment for contempt pursuant to 42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c), the issuing authority shall notify the contemnor in person or by first class mail that within 10 days of the date on the default notice the contemnor must either:

* * * * *

(2) appear before the issuing authority to **[show cause] explain** why the contemnor should not be imprisoned for nonpayment as provided by law,

* * * * *

Comment

* * * * *

When a contemnor defaults on a payment of a fine, paragraph (A) requires the issuing authority to notify the contemnor of the default, and to provide the contemnor with an opportunity to either pay the amount due or appear within a 10-day period to **[show cause] explain** why the contemnor should not be imprisoned for nonpayment. If the contemnor fails to pay or appear, the issuing authority must issue a warrant for the arrest of the contemnor.

* * * * *

Official Note: Rule 32 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 142 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART E. General Procedures in Summary Cases

Rule 451. Service.

* * * * *

Comment

This rule provides the procedures for service in summary cases. These procedures are different from those provided by Rule **[577] 576** for motions and documents in court cases. See also Rule **[113] 114**, which sets forth**, inter alia,** the procedures for providing notice to a defendant of court proceedings requiring the defendant's presence in court cases and in summary cases on appeal for a trial de novo.

* * * * *

Official Note: Rule 80 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 451 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 Comment revision updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 456. Default Procedures: Restitution, Fines, and Costs.

* * * * *

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to **[show cause] explain** why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

* * * * *

Comment

* * * * *

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to **[show cause] explain** why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(D).

* * * * *

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(2). General Procedures in all Bail Cases

Rule 535. Receipt for Deposit; Return of Deposit.

(A) The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or **in the list of** docket **entries** and the bail bond the amount deposited and the name of the person who made the deposit. When the issuing authority accepts such a deposit, the deposit, the docket transcript, and a copy of the bail bond shall be delivered to the clerk of courts.

* * * * *

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 changes to paragraph (A) published with Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) SANCTIONS

(1) Revocation of Release

* * * * *

(c) The bail authority **also** may **[** also **]** order the defendant or the defendant's surety to **[** show cause **]** **explain** why the defendant's release should not be revoked or why the conditions of release should not be changed. A copy of the order shall be served on the defendant and the defendant's surety, if any.

* * * * *

Official Note: Former Rule 4016, adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

PART F. Procedures Following Filing of Information

Rule 571. Arraignment.

(A) Except as otherwise provided in paragraph (D), arraignment shall be in such form and manner as provided by local court rule. Notice of arraignment shall be given to the defendant as provided in Rule **[** 113 **]** 114 or by first class mail. Unless otherwise provided by local court rule, or postponed by the court for cause shown, arraignment shall take place no later than 10 days after the information has been filed.

* * * * *

Comment

* * * * *

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule **[** 113 **]** 114.

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 572. Bill of Particulars.

(A) A request for a bill of particulars shall be served in writing by the defendant upon the attorney for the Commonwealth within 7 days following arraignment. The request shall promptly be filed **and served** as provided in Rule 576 **[subsequent to service upon the attorney for the Commonwealth]**.

* * * * *

Official Note: Rule 304 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; amended June 19, 1996, effective July 1, 1996; renumbered Rule 572 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments to paragraph (A) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 573. Pretrial Discovery and Inspection.

(A) INFORMAL

Before any disclosure or discovery can be sought under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose, the demanding party may make appropriate motion **[to the court]**. Such motion shall be made within 14 days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

* * * * *

(C) DISCLOSURE BY THE DEFENDANT

(1) MANDATORY:

(a) Notice of Alibi Defense:

A defendant who intends to offer the defense of alibi at trial **[shall, at], within** the time required for filing the omnibus pretrial motion under Rule **[578, file of record notice signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense] 579, shall file with the clerk of courts notice specifying the intention to claim the defense of alibi, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.** Such notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of witnesses whom the defendant intends to call in support of such claim.

(b) Notice of Insanity Defense or Mental Infirmity Defense:

A defendant who intends to offer at trial the defense of insanity, or a claim of mental infirmity **[shall, at], within** the time required for filing an omnibus pretrial motion under Rule **[578, file of record notice signed by the defendant or the attorney for the defendant, with proof of service upon the attorney for the Commonwealth, specifying intention to claim such defense] 579, shall file with the clerk of courts notice specifying the intention to claim the defense of insanity or of mental infirmity, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.** Such notice shall contain specific available information as to the nature and extent of the alleged insanity or claim of mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call at trial to establish such defense.

* * * * *

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U. S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

* * * * *

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the defendant as the interests of justice require.

* * * * *

Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and (C)(1)(b), and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

PART F(1). Motion Procedures

Rule 574. **[Motions] (Rescinded)**.

[(A) All motions, challenges, and applications or requests for an order or relief shall be made by written motion, except as otherwise provided in these rules, or as permitted by the court, or when made in open court during a trial or hearing.

(B) A written motion shall comply with the following requirements:

(1) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay.

(2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested. The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(3) If the motion sets forth facts that do not already appear of record in the case it shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under Crimes Code § 4904, 18 Pa.C.S. § 4904.

(C) Any motion may request such alternative relief as may be appropriate.

(D) The failure, in any motion, to state a type of relief or order, or a ground therefor, shall constitute a waiver of such relief, order, or ground.]

Official Note: Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; **rescinded and replaced by Rule 575 March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rescission of Rule 574 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 575. **Motions and** Answers.

(A) MOTIONS

(1) All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

(2) A written motion shall comply with the following requirements:

(a) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay.

(b) The motion shall include the court, caption, term, and number of the case in which relief is requested.

(c) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

(d) The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(e) The motion shall include any requests for hearing or argument, or both.

(f) The motion shall include a certificate of service as required by Rule 576(B)(4).

(g) If the motion sets forth facts that do not already appear of record in the case, the motion shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(3) The failure, in any motion, to state a type of relief or a ground therefor shall constitute a waiver of such relief or ground.

(4) Any motion may request such alternative relief as may be appropriate.

(5) Rules to Show Cause and Rules Returnable are abolished. Notices of hearings are to be provided pursuant to Rules 114(C) and 577(A)(2).

(B) ANSWERS

[(A) An] (1) Except as provided in Rule 906 (Answer to Petition for Post-Conviction Collateral Relief), an answer to a motion is not required unless **[ordered by the court or otherwise provided in these rules] the judge orders an answer in a specific case as provided in Rule 577**. Failure to answer shall not constitute an admission of the **[well-pleaded]** facts alleged in the motion **[unless an answer has been required by the court or otherwise by these rules]**.

[(B) The court may order a written answer, or it may order an oral response at the time of a hearing or argument on a motion.

(C)] (2) A party may file a written answer, or**, if a hearing or argument is scheduled,** may respond orally at **[the] that** time **[of a hearing or argument on a motion]**, even though an answer **[has] is** not **[been]** required **[by the court and has not been otherwise required by these rules]**.

[(D)] (3) * * *

[(1)] (a) * * *

[(2)] (b) [The answer shall be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion.] The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

(c) The answer shall include a certificate of service as required by Rule 576(B)(4).

[(3)] (d) If the answer sets forth facts that do not already appear of record in the case **[it], the answer** shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written

statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under **the** Crimes Code § 4904, 18 Pa.C.S. § 4904.

[(4)] (e) * * *

(C) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to attach a proposed order to a motion or an answer, requiring an answer to every motion, or requiring a cover sheet or a backer for any motion or answer.

Comment

For the definition of "motion," see Rule 103.

See Rule 1005 for the procedures for pretrial applications for relief in the Philadelphia Municipal Court.

"Rules to Show Cause" and "Rules Returnable" were abolished in 2004 because the terminology is arcane, and the concept of these "rules" has become obsolete. These "rules" have been replaced by the plain language "notice of hearings" provided in Rule 577(A)(2).

Pursuant to paragraphs (A)(2)(f) and (B)(3)(c), and Rule 576(B)(4), all filings by the parties must include a certificate of service setting forth the date and manner of service, and the names, addresses, and phone numbers of the persons served.

Although paragraph (B)(1) does not require an answer to every motion, the rule permits a judge to order an answer in a specific case. See Rule 114 for the requirements for the filing and serving of orders, and for making docket entries.

Paragraph (B)(1) changes prior practice by providing that the failure to answer a motion in a criminal case never constitutes an admission. Although this prohibition applies in all cases, even those in which an answer has been ordered in a specific case or is required by the rules, the judge would have discretion to impose other appropriate sanctions if a party fails to file an answer ordered by the judge or required by the rules.

Paragraph (C), titled "Unified Practice," was added in 2004 to emphasize that local rules must not be inconsistent with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

The prohibition on local rules mandating cover sheets was added because cover sheets are no longer necessary with the addition of the Rule 576(B)(1) requirement that the court administrator be served a copy of all motions and answers.

Although paragraph (C) precludes local rules that require a proposed order be included with a motion, a party should consider whether to include a proposed order. Proposed orders may aid the court by defining the relief requested in the motion or answer.

***Official Note:* Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Former** Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575 and amended March 1, 2000, effective April 1, 2001; **Rules 574 and 575 combined as Rule 575 and amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rule changes combining Rule 574 with Rule 575 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 576. Filing **and Service by Parties**.

(A) **FILING**

[Except as otherwise provided in these rules, all] (1) All written motions **and any written answers**, and any **[notice] notices** or **[document] documents** for which filing is required, shall be filed with the clerk of courts.

(2) Filing shall be by:

(a) personal delivery to the clerk of courts; or

(b) mail addressed to the clerk of courts. Except as provided by law, filing by mail shall be timely only when actually received by the clerk of courts within the time fixed for filing.

[(B)] (3) [Except as provided in paragraph (C), when a written motion, notice, or] The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. When a document**, which is filed pursuant to paragraph (A)(1),** is received by the clerk of courts, the clerk shall **[docket it and record the time of filing in the docket. A copy of these papers shall be promptly transmitted to such person as may be designated by the court] time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and promptly shall place the document in the criminal case file**.

[(C)] (4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall **[not docket or record it, but] accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document** shall **[forward it] be forwarded** to the defendant's attorney **and the attorney for the Commonwealth** within 10 days of receipt.

[(D) Filing may be accomplished by:

(1) personal delivery to the clerk of courts; or

(2) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.]

(5) If a defendant submits a document pro se to a judge without filing it with the clerk of courts, and the document requests some form of cognizable legal relief, the judge promptly shall forward the document to the clerk of courts for filing and processing in accordance with this rule.

(6) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring that a document has to be presented in person before filing or requiring review by a court or court administrator before a document may be filed.

(B) SERVICE

(1) All written motions and any written answers, and notices or documents for which filing is required, shall be served upon each party and the court administrator concurrently with filing.

(2) Service on the parties shall be by:

(a) personal delivery of a copy to a party's attorney, or the party if unrepresented; or

(b) personal delivery of a copy to the party's attorney's employee at the attorney's office; or

(c) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the attorney in the attorney's box; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(f) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has made a written request for this method of service for the document; or

(g) delivery to the party's attorney, or the party if unrepresented, by carrier service.

(3) Service on the court administrator shall be by:

(a) mailing a copy to the court administrator; or

(b) in those judicial districts that maintain in the courthouse assigned boxes for the court administrator to receive service, leaving a copy for the court administrator in the court administrator's box; or

(c) leaving a copy for the court administrator at the court administrator's office; or

(d) sending a copy to the court administrator by facsimile transmission or other electronic means if authorized by local rule; or

(e) delivery to the court administrator by carrier service.

(4) Certificate of Service

(a) All documents that are filed and served pursuant to this rule shall include a certificate of service.

(b) The certificate of service shall be in substantially the form set forth in the Comment, signed by the party's attorney, or the party if unrepresented, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

(C) Any non-party requesting relief from the court in a case shall file the motion with the clerk of courts as provided in paragraph (A), and serve the defendant's attorney, or the defendant if unrepresented, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

Comment

[This rule] Paragraph (A)(1) requires the filing of all written motions**[, but it] and answers. The provision also** applies to notices and other documents only if filing is required by some other rule or provision of law.

[As used here, "written motions" includes all motions, challenges, and applications or requests for an order or relief that must be made by written motion under Rule 574(A).] See, e.g., the notice of withdrawal of charges provisions in Rule 561 (Withdrawal of Charges by Attorney for the Commonwealth), the notice of alibi defense and notice of insanity defense or mental infirmity defense provisions in Rule 573 (Pretrial Discovery and Inspection), the notice that offenses or defendants will be tried together provisions in Rule 582 (Joinder—Trial of Separate Indictments or Informations), the notice of aggravating circumstances provisions in Rule 801 (Notice of Aggravating Circumstances), and the notice of challenge to a guilty plea provisions in Municipal Court cases in Rule 1007 (Challenge to Guilty Plea).

[Those rules that provide for filing with the trial court or the sentencing court are not exceptions to the general requirement of this rule that filing be with the clerk of courts. As used in this rule, "clerk of courts" is intended to mean that official in each judicial district who has the responsibility and function under state or local law to maintain the official court file and docket, without regard to that person's official title.

The second sentence of paragraph (B) is intended to provide flexibility to the local courts to designate the court official, such as a local court administrator, who processes motions and other matters for appropriate scheduling and disposition.]

When a motion, notice, document, or answer is presented for filing pursuant to paragraph (A)(1), the clerk of courts must accept it for filing even if the motion, notice, document, or answer does not comply with a rule or statute or appears to be untimely filed. It is suggested that the judicial district implement procedures to inform the filing party when a document is not in compliance with these rules or a local rule so the party may correct the problem.

See *Commonwealth v. Jones,* 700 A.2d 423 (Pa. 1997); and *Commonwealth v. Little,* 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding pro se (the "prisoner mailbox rule").

[Paragraph (C) was added in 1996 to provide a uniform, statewide] The 2004 amendments to para-

graph (A)(4) modified the procedure **[for] by which** the clerks of courts **[to]** handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. **As amended, paragraph (A)(4) requires, in all cases in which a represented defendant files a document, that the clerk of courts make a docket entry of the defendant's filing and place the document in the criminal case file, and then forward a copy of the document to both the attorney of record and the attorney for the Commonwealth. See *Commonwealth v. Castro*, 766 A.2d 1283 (Pa. Super. 2001). [See] Compare** Pa.R.A.P. 3304 (Hybrid Representation). **The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response. See Rules 120 (Attorneys—Appearance and Withdrawals) and 122 (Assignment of Counsel) concerning the duration of counsel's obligation under the rules.**

Paragraph **[(C)] (A)(4)** only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding pro se.

The purpose of paragraph (A)(5) is to ensure documents raising cognizable legal issues submitted to the judge are transmitted to the clerk of courts, and does not relieve the defendant from complying with the other requirements of the rules. When a document is forwarded to the clerk from a judge, if the defendant is unrepresented, the clerk is to proceed as provided in paragraph (A)(3) and the defendant is to be treated like any other party. If the defendant is represented, the clerk is to proceed pursuant to paragraph (A)(4).

Paragraph (A)(6), titled "Unified Practice," was added in 2004 to emphasize that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

Any local rule that requires personal appearance in addition to filing with the clerk of courts is inconsistent with this rule.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Paragraph (B)(1) requires that, concurrently with filing, the party must serve a copy on the court administrator. This requirement provides flexibility to accommodate the various practices for scheduling. However, it is not intended to replace the requirement that the party must file with the clerk of courts.

When a judge is assigned to a case, in addition to the requirements of paragraph (B)(1), it is suggested counsel send the judge a courtesy copy of any filings.

Under any system of scheduling, once a hearing or argument is scheduled, the court or court administrator must give notice of the hearing or argument to the parties, and a copy of the notice must be filed in the criminal case file and a docket entry made. See Rule 114(C)(2).

Although paragraph (C)(1)(d) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(2)(f). The authorization for service by facsimile transmission or other electronic means under this rule is document specific and only valid for an individual document. Counsel will have to renew the authorization for each document.

For the definition of "carrier service," see Rule 103.

Paragraph (B)(4) requires the filing party to include with the document filed a certificate of service. The certificate of service should be in substantially the following form:

I hereby certify that I am this day serving upon the persons and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim.P. 575.

Service by first class mail addressed as follows:

(NAME) _____ (717) 787-0000
Deputy Attorney General
Office of the Attorney General
16 Floor Strawberry Square
Harrisburg PA 17120
(Attorney for the Commonwealth)

Service in person as follows:

(NAME) _____ (717) 240-0000
Assistant District Attorney
Cumberland County Courthouse
Carlisle, PA
(Attorney for the Commonwealth)

Service by leaving a copy at the office of:

(NAME) _____ (717) 240-0000
Court Administrator
Cumberland County Courthouse
Carlisle, PA

Service by certified mail, return receipt requested, as follows:

(NAME) _____ (no phone)
Drawer 00000000
Camp Hill, PA

Service by electronic means addressed as follows:

(NAME) _____ (717) 545-0000
000 Magnolia Ave, Suite A
Harrisburg PA 17122
email address: johndoe@hotmail.com
(Attorney for the Defendant)

Dated:

(S) _____
(NAME), Esq. (Attorney Registration No. 00000)

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities), a knowingly false certificate of service constitutes a misdemeanor of the second degree.

See Rule 451 (Service) for the procedures for service in summary cases.

See Rule 114 (Orders and Court Notices: Filing, Service, and Docket Entries) for the requirements for docketing and service of court orders and notices.

See Rule 103 (Definitions) for the definitions of court administrator, clerk of courts, and motions.

Official Note: **Former** Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. **Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 changes amending and combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 577. **[Service] (Rescinded)**.

[(A) Except as otherwise provided in these rules, all written motions and any document for which filing is required shall be served upon each party concurrently with filing.

(B) Except as otherwise provided in these rules, service may be accomplished by:

(1) personal delivery of a copy to a party or a party's attorney; or

(2) leaving a copy for or mailing a copy to a party's attorney at the attorney's office; or

(3) sending a copy to a party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement.

(C) Proof of service need not be filed unless ordered by the court.

Comment

This rule requires service of all written motions, but it applies to other documents only if filing is required by some other rule or provision of law. As used here, "written motions" includes all motions, challenges, and applications or requests for an order or relief that must be made by written motion under Rule 574.

See Rule 451 for the procedures for service in summary cases.

See Rule 113 for the procedures for giving a defendant notice of a court proceeding requiring the defendant's appearance.]

Official Note: Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; **rescinded March 3, 2004, effective July 1, 2004, and replaced by Rule 576(B)**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 rescission of the rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 577. Procedures Following Filing of Motion.

(A) Following the filing of a motion,

(1) if the judge determines an answer is necessary, the court may order a written answer, or it may order an oral response at the time of a hearing or argument on a motion. Any written order shall be filed, a docket entry made, and served by the clerk of courts pursuant to Rule 114(B), (C), and (D).

(2) If the judge determines the motion requires a hearing or argument, the court or the court administrator shall schedule the date and time for the hearing or argument. Pursuant to Rule 114(B)(2), notice of the date and time for the hearing or argument shall be served by the clerk of courts, unless the president judge has designated the court or court administrator to serve these notices.

(B) The judge promptly shall dispose of any motion.

(C) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a personal appearance as a prerequisite to a determination of whether a hearing or argument is scheduled.

Comment

In all cases, the notice of the date and time of the hearing or argument must be filed and served, and docket entries made, as required by Rule 114.

Paragraph (C), titled "Unified Practice," emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

The practice in some counties of requiring an attorney to take a motion to a judge for the scheduling of a hearing is inconsistent with this rule.

Official Note: Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004, and replaced by Rule 576(B). New Rule 577 adopted March 3, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 579. Time for Omnibus Pretrial Motion and Service.

* * * * *

(B) Copies of all pretrial motions shall be served in accordance with Rule **[577] 576**.

Comment

* * * * *

For general requirements concerning the filing and service of motions, notices, and other documents **by parties**, see **[Rules] Rule** 576 **[and 577]**.

Official Note: Formerly Rule 305 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 307 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; renumbered Rule 579 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 581. Suppression of Evidence.

(A) The **[defendant or the]** defendant's attorney**, or the defendant if unrepresented,** may make a motion to the court to suppress any evidence alleged to have been obtained in violation of the defendant's rights.

* * * * *

(E) **[Upon the filing of such motion, a judge of the court shall fix a time for a] A** hearing**[, which] shall be scheduled in accordance with Rule 577 (Procedures Following Filing of Motion). A hearing** may be either prior to or at trial, and shall afford the attorney for the Commonwealth a reasonable opportunity for investigation. The judge shall enter such interim order as may be appropriate in the interests of justice and the expeditious disposition of criminal cases.

* * * * *

Comment

* * * * *

It should be noted that failure to file the **[application] motion** within the appropriate time limit constitutes a waiver of the right to suppress. However, once the **[application] motion** is timely filed, the hearing may be held at any time prior to or at trial.

All motions to suppress must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

* * * * *

Official Note: Rule 323 adopted March 15, 1965, effective September 15, 1965; amended November 25, 1968, effective February 3, 1969. The 1968 amendment suspended, amended, and consolidated former Rules 323, 324, 2000 and 2001 of the Pennsylvania Rules of Criminal Procedure. This was done in accordance with Section 1 of the Act of July 11, 1957, P. L. 819, 17 P. S. § 2084. Paragraph (f) amended March 18, 1972, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraphs (f) and (g) and Comment amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 581 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments to paragraphs (A) and (E) and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 587. Motion for Dismissal.

* * * * *

(B) The attorney for the Commonwealth shall be afforded **an** opportunity to **[show cause why the relief prayed for should not be granted] respond**.

Comment

Cf. Pa.R.J.A. 1901 concerning termination of inactive cases.

See Rule 575 for the procedures governing motions and answers.

Official Note: Rule 316 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; renumbered Rule 315 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 587 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendment of paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

Rule 720. Post-Sentence Procedures; Appeal.

* * * * *

(B) OPTIONAL POST-SENTENCE MOTION.

* * * * *

(3) Time Limits for Decision on Motion.

The judge shall not vacate sentence pending decision on the post-sentence motion, but shall decide the motion as provided in this paragraph.

* * * * *

(c) When a post-sentence motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided in Rule 114, forthwith shall serve a copy of the order on the attorney for the Commonwealth, the defendant's attorney, or **the**

defendant if unrepresented **[the defendant]**, that the post-sentence motion is deemed denied. This order is not subject to reconsideration.

* * * * *

Comment

* * * * *

DISPOSITION

* * * * *

If the motion is denied by operation of law, paragraph (B)(3)(c) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorney for the Commonwealth, the defendant's attorney, or **the defendant** if unrepresented **[the defendant]**, that the motion has been denied. This notice is intended to protect the defendant's right to appeal. The clerk of courts **also** must **[also]** comply with the **[notice and docketing] filing, service, and docket entry** requirements of Rule **[113] 114**.

* * * * *

Official Note: Previous Rule 1410, adopted May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1410. Present Rule 1410 adopted March 22, 1993 and amended December 17, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; amended August 22, 1997, effective January 1, 1998; Comment revised October 15, 1997, effective January 1, 1998; amended July 9, 1999, effective January 1, 2000; renumbered Rule 720 and amended March 1, 2000, effective April 1, 2001; amended August 21, 2003, effective January 1, 2004**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 721. Procedures for Commonwealth Challenges to Sentence; Sentencing Appeals.

* * * * *

Comment

* * * * *

Entry of Order by Clerk of Courts

Under paragraph (D)(1), when a Commonwealth motion to modify sentence has been denied by operation of law, the clerk of courts must enter an order on behalf of the court and furnish copies to the attorney for the Commonwealth, the defendant, and defense counsel. The clerk of courts' order is ministerial and not subject to reconsideration. See paragraph (D)(2). The clerk of courts **also** must **[also]** comply with the **[notice and docketing] filing, service, and docket entry** requirements of Rule **[113] 114**.

* * * * *

No Commonwealth Motion to Modify Sentence Filed

Paragraph (B)(2)(a) covers the time for filing a notice of appeal when the Commonwealth has elected not to file a motion to modify sentence with the trial judge. The time for filing the Commonwealth's notice of appeal under this **[subsection] paragraph** depends on whether the defendant has filed a post-sentence motion. When the defendant files a post-sentence motion, paragraph (B)(2)(a)(i) provides that the entry of the order disposing of the defendant's post-sentence motion triggers the 30-day period during which the Commonwealth's notice of appeal must be filed. If no post-sentence motion is filed, it is the entry of the order imposing sentence that triggers the Commonwealth's 30-day appeal period. See Rule 721(B)(2)(a)(ii).

* * * * *

Official Note: Rule 1411 adopted August 22, 1997, effective January 1, 1998; renumbered Rule 721 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 903. Docketing and Assignment.

(A) Upon receipt of a petition for post-conviction collateral relief, the clerk of courts **promptly** shall **[immediately docket] time stamp** the petition **[to the same term and number as the underlying conviction and sentence] with the date of receipt and make a docket entry, at the same term and number as the underlying conviction and sentence, reflecting the date of receipt, and promptly shall place the petition in the criminal case file**. The clerk shall **[thereafter]** transmit the petition and the **[record] criminal case file** to the trial judge, if available, or to the administrative judge, if the trial judge is not available. If the defendant's confinement is by virtue of multiple indictments or informations and sentences, the case shall be docketed to the same term and number as the indictment or information upon which the first unexpired term was imposed, but the court may take judicial notice of all proceedings related to the multiple indictments or informations.

(B) When the petition is filed and **[docketed] the docket entry is made**, the clerk shall transmit a copy of the petition to the attorney for the Commonwealth.

* * * * *

(D) When the trial judge is unavailable or disqualified, the administrative judge **promptly** shall **[promptly]** assign and transmit the petition and the record to another judge, who shall proceed with and dispose of the petition in accordance with these rules.

Comment

* * * * *

If a defendant in a death penalty case files a petition before the trial judge has made a determination concerning the appointment of counsel as required by Rule 904**[(F)](G)**, **after making the docket entry and placing the petition in the criminal case file,** the clerk **promptly** must **[promptly]** forward **a copy of** the **[docketed]** petition to the trial judge for that determination.

Official Note: Previous Rule 1503 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 1504. Present Rule 1503 adopted February 1, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; amended August 11, 1997, effective immediately; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 903 and Comment revised March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 changes concerning making docket entries published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Rule 906. Answer to Petition for Post-Conviction Collateral Relief.

* * * * *

(B) Upon the entry of an order directing an answer, the clerk of courts shall serve a copy of the order on the attorney for the Commonwealth, **[the defendant, and]** the defendant's attorney**, or the defendant if unrepresented**.

(C) If the judge orders an answer, the answer shall be in writing and shall be filed and served within the time fixed by the judge in ordering the answer. The time for filing the answer may **[thereafter]** be extended by the judge for cause shown.

* * * * *

Comment

* * * * *

"First counseled petition," as used in paragraph (E)(1), includes petitions on which defendants have elected to proceed pro se pursuant to Rule **[1504] 904**(F)(1)(a). See also the Comment to Rule 903.

Official Note: Previous Rule 1506 adopted January 24, 1968, effective August 1, 1968; Comment revised April 26, 1979, effective July 1, 1979; rule rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; Comment revised January 28, 1983, effective July 1, 1983; rule rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1508. Present Rule 1506 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 906 and Comment revised March 1, 2000, effective April 1, 2001**; amended March 3, 2004, effective July 1, 2004**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 3, 2004 changes to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

FINAL REPORT[1]

Proposed New Pa.Rs.Crim.P. 113, 116, and 577; Amendments to Rules 103, 114, 142, 456, 535, 536, 571, 572, 573, 575, 576, 579, 581, 587, 720, 903, and 906; Revision of the Comments to Rules 451 and 721; and Rescission of Rules 113, 574, and 577

Procedures Governing Motions and Answers, and Orders and Court Notices in Criminal Cases

On March 3, 2004, effective July 1, 2004, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rules 113 (Criminal Case File and Docket Entries), 116 (General Supervisory Powers of President Judge), and 577 (Procedures Following Filing of Motion); rescinded current Rules 113 (Notice of Court Proceeding(s) Requiring Defendant's Presence), 574 (Motions), and 577 (Service); amended Rule 114 (Notice and Docketing of Orders); combined and amended Rule 574 (Motions) with Rule 575 (Answers) and Rule 576 (Filing) with Rule 577 (Service); and adopted correlative changes to Rules 103 (Definitions), 142 (Procedures Governing Defaults in Payments of Fine Imposed as Punishment for Contempt), 451 (Service), 456 (Default Procedures: Restitution, Fines, and Costs), 535 (Receipt for Deposit; Return of Deposit), 536 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety), 572 (Bill of Particulars), 573 (Pretrial Discovery and Inspection), 579 (Time for Omnibus Pretrial Motion and Service), 581 (Suppression of Evidence), 587 (Motion for Dismissal), 720 (Post-Sentence Procedures; Appeal), 721 (Procedures for Commonwealth Challenges to Sentence; Sentencing Appeals), 903 (Docketing and Assignment) and 906 (Answer to Petition for Post-Conviction Collateral Relief). These rule changes, which are the culmination of several years of work by the Committee undertaken to address the problems caused by the proliferation of local rules and the lack of uniformity in procedures in the important area of motions practice in criminal cases that have hindered the statewide practice of law, clarify the procedures in criminal cases governing motions, answers, orders, and court notices, achieve greater statewide uniformity in criminal motions practice, and eliminate the local rules and practices governing motions practice that are hampering the statewide practice of law, and include.[2]

(1) new Pa.Rs.Crim.P. 113 (Criminal Case File and Docket Entries), 116 (General Supervisory Powers of President Judge), and 577 (Procedures Following Filing of Motion) that fill in gaps in the Criminal Rules concerning (1) maintaining the criminal case file and making and maintaining docket entries, (2) the responsibilities of the president judge in ensuring the rules are followed, and (3) the court procedures after a motion is filed;

(2) changes to Rule 114 (Notice and Docketing of Orders) that clarify the requirements for filing, making docket entries, and service of orders and court notices;

(3) changes to Rules 574 (Motions) and 575 (Answers), which also are being combined because of the procedural interrelationship between motions and answers, and Rules 576 (Filing) and 577 (Service), which also are being

[1] The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

[2] Also included in these changes are rule changes that address motion rule-related issues that have arisen during the development of the Court's statewide common pleas automation project.

combined because of the procedural interrelationship between filing and service, to more clearly set forth the statewide procedures for motions and answers and to specifically prohibit local rules that are inconsistent with the statewide rules; and

(4) changes to a number of rules to conform these rules to the motions rules changes.

INTRODUCTION

During the last several years, the Committee has continued to review the Criminal Rules and to monitor local rules in an ongoing effort to promote the statewide uniformity of practice and procedure and eliminate the local rules and local practices that are hampering the statewide practice of law.[3] The Committee noted the area of motions practice is ripe for clarification and change because of the numerous local rules and practices that create hurdles to the statewide practice of law or are inconsistent with the Criminal Rules, such as those local practices that require an attorney to appear in person before a judge on a certain day and at specified times to present the motion and to get a hearing date before the motion is filed in the clerk's office. In view of this finding, the Committee took a closer look at the statewide motions practice, and subsequently developed this package of changes to the Criminal Rules governing motions and answers, and the filing and service of motions, answers, orders, and notices.

BACKGROUND

For a number of years, the Committee has been receiving correspondence from attorneys with practices in more than one judicial district, including counsel from the State Police and the Attorney General's office, questioning the validity of specific local rules or local practices that appear to conflict with current Rules 114, 574, 575, 576, and 577, and are hampering their ability to practice in multiple judicial districts.[4]

In an effort to better understand the problems related to motions practice, the Committee first contacted current and former Committee members engaged in private practice concerning their experience with local rules and local practices regulating motions practice. Subsequently, with the assistance of the administrative staff for the Pennsylvania Association of Criminal Defense Lawyers (PaCDL), we surveyed the members of PaCDL for their input concerning the impact of local rules on their multi-judicial district practices.[5] From the information we received from these surveys, as well as the correspondence from the other attorneys, the Committee identified several aspects of local motions practice that seem to be the major "troublemakers" for attorneys with multi-judicial district practices, including local rules and local practices requiring

- counsel to personally appear on specific days and times to file motions
- counsel to personally appear to present motions to the judge before filing with the clerk of courts
- counsel to personally obtain hearing dates and serve the other parties
- counsel to use rules to show cause and rules returnable
- cover sheets or answers, requiring hearings or oral arguments, or requiring briefs or proposed orders in every case.

In addition, the Committee identified other problems that we thought should be addressed in the rules including problems in ensuring prompt service under the rules, and prompt recording of information on the docket.

The Committee also surveyed all president judges to gather general information about motions practice in their respective judicial districts, and to determine whether they use cover sheets, rules to show cause or rules returnable, and require proposed orders. We received responses from about half the judicial districts, and found that most do not use cover sheets or rules to show cause or rules returnable, and they were equally divided concerning requiring a proposed order, or answers, hearings, oral arguments, or briefs. Armed with all this information, as well as the additional information and input we received following the publication of the proposal in December 2001,[6] and after extensive review and discussions, the Committee agreed to recommend a number of changes to the Criminal Rules that:

(1) clarify in a new rule the procedures for maintaining the criminal case file and maintaining a list of docket entries (new Rule 113);

(2) clarify the general supervisory powers of the president judge (new Rule 116);

(3) require a certificate of service (Rules 575 and 576);

(4) no longer allow the failure to file an answer to be deemed an admission (Rule 575);

(5) abolish rules to show cause and rules returnable and provide for a notice of hearing (Rule 575);

(6) prohibit local rules requiring a proposed order in every case or an answer to every motion (Rule 575);

(7) abolish cover sheets and backers (Rule 575);

(8) make it clear that the clerk of courts must accept all documents presented for filing (Rule 576);

(9) make it clear that any local rules that require personal appearance to file, or court review before filing, or personal appearance to get a hearing date are prohibited by the rules (Rules 576 and 577);

(10) make it clear when a defendant files a document with a judge without filing it with the clerk of courts, the judge promptly must forward to document to the clerk (Rule 576);

(11) expand the methods of service permitted by the rules, including service using facsimile transmissions or other electronic means or using a carrier service (Rules 114 and 576);

(12) provide for service on the court administrator of any document that is filed (Rule 576);

(13) acknowledge that there are variations in how scheduling is handled in the judicial districts, and those variations should be permitted to continue (Rules 114 and 577); and

[3] The first phase of our review resulted in the Court's Order amending Pa.R.Crim.P. 105 (Local Rules) to more clearly define local rules and set forth the procedures for local rules to be effective and enforceable. See Court's Order and Committee explanatory Final Report at 30 Pa.B. 5842 (November 11, 2000).

[4] We repeatedly have heard that, notwithstanding the requirements of Rule 105 (Local Rules), frequently the local requirements are not memorialized as local rules or vary from judge to judge within a judicial district, are difficult for out-of-county practitioners to find, and are not lodged with the Committee making it difficult for us to monitor.

[5] We sent out more that 500 surveys, and received approximately 200 responses.

[6] See 31 Pa.B. 6784 (December 15, 2001). We received 39 letters in response to the publication of the proposal. The correspondents included 16 president judges, three other common pleas court judges; eight clerks of courts; two court administrators; six attorneys; Judge Stallone, then-President of the Conference of State Trial Judges; Judge Seamans, then-Chair of the President Judges Committee of the Conference of State Trial Judges; Jim Morgan, the solicitor for the Prothonotary and Clerks of Courts Association; and David Price, staff attorney for the AOPC's Common Pleas Automation Project.

(14) include provisions governing what happens after a motion is filed and served (new Rule 577).

The rule changes incorporating the above ideas and making other conforming and correlative changes are discussed more fully below.

DISCUSSION

1. *Unified Practice*

One of the primary goals of the rule changes is to eliminate the local rules and local practices that conflict with the statewide rules and adversely affect motions practice and the statewide practice of law within the unified judicial system. After a great deal of discussion trying to determine the best way to address this matter, the Committee settled on a "sledgehammer" approach—adding specific prohibitions in the rules and highlighting these prohibitions in the Comments. To accomplish this, a new section, titled "Unified Practice," has been added to Rules 114, 575, 576, and new Rule 577. This section includes the general prohibition against local rules that are inconsistent with the provisions of the rule, tying in with the Rule 105 (Local Rules) general prohibition against all local rules that are inconsistent with the statewide rules, and specific prohibitions against the local rules and local practices that are creating the most significant impediments to the statewide practice of law.

a. *Rule 114*

Rule 114 addresses the filing and service of orders and court notices. The troublesome local practices identified as impediments to the statewide practice of law related to Rule 114 are the requirements in some judicial districts or by some judges that, in every case, counsel must appear in person to obtain a hearing date, and then counsel must file the notice of the hearing date and serve it on the parties. Such local practices necessitate counsel traveling to the judicial district, sometimes on specified days and at specified times, to file their motion, obtain a hearing date, then file the notice of the hearing date, and finally serve the notice. Although such requirements may not be a significant burden on local counsel, these requirements significantly impact on out-of-county counsel and impose greater costs on their clients. In addition, the Committee learned that in some judicial districts these requirements are called administrative orders and are not treated as local rules so Rule 105 is not followed, making access to these local rules difficult.[7]

These local practices have been prohibited by the Court, see Rule 114(D), not only because they are impediments to the statewide practice of law, but also because they are contrary to the intent and spirit of the statewide rules. Similarly, the "Unified Practice" provision in Rule 577(C) prohibits local rules that require a personal appearance as a prerequisite to a determination whether a hearing or argument is scheduled.

b. *Rule 575*

Rule 575 governs motions and answers. Four specific local rule or local practice requirements have been identified as causing problems, and are prohibited by paragraph (C). These are the requirements in some judicial districts or by some judges that all motions include cover sheets, backers, or proposed orders, and that there be an answer filed to every motion. The Committee learned from our survey of president judges that few judicial districts are using cover sheets or backers. In view of this, and (1) cognizant of the difficulties attorneys have in finding out whether a judicial district requires cover sheets or backers and the confusion the lack of uniformity in these requirements causes to the practitioner, (2) because Rule 576(B)(1) will require that the court administrator be served with a copy of any motion that is filed, and (3) to eliminate another hurdle to the statewide practice of law, the use of cover sheets and backers is prohibited.

Similarly, from our survey of the president judges, we learned that very few judicial districts require proposed orders. Furthermore, the Committee noted it is often difficult when making a motion to know what should be the precise nature of the order to propose for the motion. Accordingly, proposed orders may not be mandated for every motion or answer. However, as explained in the last paragraph of the Rule 575 Comment, a party has the option of attaching a proposed order in the appropriate case, and should consider that a proposed order may aid the court by defining the relief requested in the motion or answer.

Finally, the local rules requiring answers in every case conflict with the provisions of present Rule 575,[8] and are included in the specific prohibitions in paragraph (C).

c. *Rule 576*

Rule 576 governs the procedures for filing motions. The area of motions practice that generates the most local rules and the greatest variance in local practice concerns filing of motions. Although the 1983 amendments to the rules governing filing required all filings to be with the clerk of courts first, either by mail or in person, before transmission to other court officials, the proliferation of local rules and local practices governing filing that are inconsistent with Rule 576 continues to plague multi-judicial district practitioners, as well as the Committee. We still are hearing about local rules or local practices that require a party to bring the motion in person, frequently on specified days or at specified times, to a judge or court administrator before filing with the clerk of courts. Rule 576 has been revamped to make it absolutely clear that filing may be accomplished only by mail to the clerk or by personally delivering the motion to the clerk of courts. The "Unified Practice" provision, Rule 576(A)(6), prohibits any local rules that require a document to be presented in person or reviewed by the court or court administrator before filing.

d. *Revision of the Comments to Rules 114, 575, 576, and 577*

The Comments to Rules 114, 575, 576, and 577 all include a provision explaining the purpose of the "Unified Practice" provision, and its relationship to the general prohibition in Rule 105 (Local Rules) against local rules that are inconsistent with the statewide rules. To emphasize the definition of local rule, this explanatory paragraph includes the Rule 105 definition of "local rule." In addition to this general explanatory paragraph, the Rule 575 Comment explains the Committee's reasoning for prohibiting cover sheets. Finally, because of the pervasiveness of the local rules and local practices requiring personal appearances for filing or for securing a hearing date, the Comments to Rules 576 and 577 reiterate that these practices are inconsistent with the rules.

[7] A number of the respondents to our survey indicated the only way they learned of local administrative orders was to talk to local counsel when they knew they would have a case in another judicial district.

[8] Rule 575 provides that an answer is not required unless ordered by the court, which does not mean a general order for an answer in all cases, but rather an order issued in a specific case.

2. *Certificate Of Service*

The second significant change is the addition of the requirement that all motions, Rule 575(A)(2)(f), and all answers, Rule 575(B)(3)(c), include a certificate of service. This requirement is consistent with similar provisions in the Rules of Civil Procedure and the Rules of Appellate Procedure, and it is an important addition to the Criminal Rules to better ensure all the proper parties are served.[9] The contents of the certificate of service are enumerated in Rule 576(B)(4)(b), and must include the date and manner of service, and the names, addresses, and phone numbers of the persons served. A sample form modeled on Pa.R.A.P. 122 is included in the Rule 576 Comment.

In developing the form of certificate of service, the question arose concerning of who should sign the certificate. The Committee considered whether the rule should require either the attorney, or party if unrepresented, or the person, such as a secretary, who actually mails or delivers the documents to sign the certificate of service. Since the attorney, or the party, if unrepresented, has the responsibility for service under Rule 576, we concluded the attorney or party should sign the certificate of service.

3. *New Rule 113 (Criminal Case File and Docket Entries)*

During the Committee's discussions about the filing and service of motions, answers, orders, and court notices, a number of questions came up about capturing the information concerning a criminal case, such as the dates of filing and service, and maintaining the papers filed in the case. As we considered these questions, we noted the term "docket" is used to mean different things in different rules and even within one rule.[10] In Pennsylvania, for example, the term "docket" is used as a verb to mean either the act of bringing something to the clerk of courts, with "docketing" used to mean "filing," or the act of the clerk of courts entering information on the docket, with "docketing" used to mean "entering." "Docket" also is used as a noun to mean the "record."[11] In addition, from our research, we learned that some counties do not keep a running record of docket entries, but merely construct the docket if an appeal is taken. In these counties, everything is kept in the case file, and it appears anyone can have access to this file. In view of these considerations, new Rule 113 governing the "docket" has been adopted to fill this gap.[12]

The new rule places the burden of maintaining both the criminal case file, paragraph (A), and the list of docket entries, paragraph (B), on the clerk of courts. As explained in paragraph (A), the criminal case file contains all the original records, papers, and orders filed in the case, and copies of all court notices. Paragraph (A) prohibits the removal of these documents from the criminal case file without a court order, but provides that, upon request, the clerk must provide copies of the documents at a reasonable cost. This change is needed to prevent the court's papers from being lost, a problem that from time to time is alluded to in case law, because of the difficulties lost documents create in reproducing the record of the case for the appeal.

Paragraph (B) addresses two issues. First, by using the terminology "list of docket entries" to replace "docket" to describe the entity in which all the information that is required to be maintained in a criminal case is recorded, we are accommodating both the manual system of recording and maintenance of information that is currently being used in a number of judicial districts and the electronic recording and maintenance of information that is used in others.[13] Second, the definition in paragraph (B) of "list of docket entries" as a "chronological list, in electronic or written form, of documents and entries in the criminal case file, and of all proceedings in the case," is intended to end the practice in some judicial districts of not creating the list of docket entries unless an appeal is taken. This is explained further in the second paragraph of the Comment, with the additional admonishment that such a practice is inconsistent with the rule.

Paragraph (C) outlines the minimum information that must be included in the list of docket entries.[14] Paragraph (C)(2) requires the names and addresses of all attorneys who have appeared or entered an appearance. The Committee agreed it was important to capture this information to make sure there is a record of all attorneys who appear in a case, not only for the defendant and the Commonwealth, but also for witnesses or any other litigant in the case. In addition, having the attorneys' addresses ensures proper service under Rules 114 and 576. Paragraph (C)(4) requires notations concerning oral motions and oral orders that are made or issued in the courtroom. Recognizing that not all judicial districts currently have the capacity to make docket entries from the courtroom, the provision is limited to "when directed by the court." Paragraph (C)(6) requires information concerning "the location of exhibits made part of the record during the proceedings" and was added to address a serious problem in the criminal justice system concerning, for example, the ability to locate exhibits following trial. This information in the list of docket entries will aid the courts and the parties in keeping track of the location of exhibits.

4. *Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries)*

In developing this proposal, one area of criminal practice that was identified by the correspondents and survey respondents as not uniform and creating many of the problems for the statewide practice of law is the procedures governing orders and court notices, procedures governed by current Rules 113 (Notice of Court Proceeding(s) Requiring Defendant's Presence) and 114 (Notice and Docketing of Orders). In addition to the "Uniform Practice" provision being added to Rule 114(D), discussed above in Part 1, a number of other changes to Rule 114 have been made that will tighten up the procedures governing orders and court notices.

The title to Rule 114 is being changed to "Orders and Court Notices: Filing; Service; and Docket Entries." This title more accurately reflects the application of the rule; it addresses the filing and service of orders and court notices, and making docket entries with regard to the filing and service of orders and court notices. In addition, the rule is completely reorganized into separate paragraphs that conform to the procedures enumerated in the title.

[9] For example, the Committee learned that frequently when the Attorney General's office is representing the Commonwealth, service on the Attorney General's office is not done properly and the Attorney General's office either does not receive the document filed or receives it late. This new requirement therefore will be helpful in cases in which the Attorney General's office is representing the Commonwealth, so the court will know whether that office has received service.

[10] See also the definition of "docket" in Black's *Law Dictionary*.

[11] A rule example is current Rule 114 that provides "the clerk of courts shall immediately docket the order and record in the docket the date. . . ."

[12] Because present Rule 113 has been rescinded as part of the changes for Rule 114 discussed in Part 4, Rule 113 is an available number.

[13] This new provision also accommodates the statewide automation of the criminal divisions of the courts of common pleas.

[14] It is expected that some judicial districts may require additional information be included in the list of docket entries for administrative purposes, and this is explained in the first paragraph of the Rule 113 Comment.

a. *Paragraph (A) (Filing)*

Paragraph (A) sets forth the procedures for filing all orders and court notices in the clerk of court's office. Addressing the problems related to the delays in filing of the orders and notices the Committee had identified, paragraph (A)(1) requires all orders and court notices to be transmitted promptly to the clerk of courts' office, and for the orders or notices promptly to be time stamped. Although in most cases, documents that come into the clerks' offices are time stamped, the time stamp requirement, which is a time stamp of the date the order or court notice is received in the clerk's office for filing, ensures accuracy concerning when the orders or court notices are received in the clerk's office for filing and eliminates variations in practice in this important area. To conform with Rule 113 (Criminal Case File and Docket Entries), paragraph (A)(2) requires the order or notice promptly to be placed in the criminal case file.[15] These requirements will ensure that these important court papers are filed properly and in a timely manner, and are promptly put into the criminal case file.

An issue debated at length by the Committee concerned which court officials should have the responsibility to file, make docket entries of, and put the orders and court notices in the criminal case file. Because determining who has the responsibility for filing and making docket entries is an administrative matter, we did not think paragraph (A) should assign these responsibilities, and agreed to leave the rule silent as to which court official would actually do the filing, make the docket entries, and put documents in the criminal case file. See also the discussion of new Rule 116 below.

b. *Paragraph (B) (Service)*

Paragraph (B) incorporates the present requirement of Rule 114 that the order or notice be "forthwith furnished" by requiring a copy to be served promptly, paragraph (B)(1). In addition, paragraph (B) sets forth the service requirements, paragraph (B)(2), as explained more fully below, and the methods of service, paragraph (B)(3).

Although the Committee agreed paragraph (A) should be silent concerning which official time stamps the orders and notices, we did not think the rule should be silent concerning which official should serve the court orders or notices. Because of the importance of prompt service of orders and notices, we thought it is important to specifically impose the duty on the clerk of courts. See paragraph (B)(2). However, the Committee believes this is another area where local practice should be accommodated as long as the president judge ensures the duties are performed in a timely manner. In recognition of this, paragraph (B)(2) also authorizes the president judge to promulgate a local rule designating the court, which is intended to accommodate, for example, the practice in some judicial districts of the judge's secretary or the bail agency sending out certain notices, or the court administrator as the official to serve some or all orders and court notices. The local rule requirement ensures that the local practice is readily accessible to all attorneys, and in particular those who have a multi-judicial practice, as well as any other interested individuals, is published in the *Pennsylvania Bulletin*, and is lodged with the Committee pursuant to Rule 105.

Paragraph (B)(3) incorporates the service provisions of former Rule 113 with the following changes. First, in our review of former Rule 113(1)(a), which provides for service by "personal delivery to the defendant or defendant's attorney," some members questioned whether service could be on a defendant instead of his or her attorney as implied by this language. The Committee concluded service should always be on the attorney unless the party is unrepresented. See paragraph (B)(3)(a)(i).[16] During our discussion of this provision, the Committee considered whether service could be on an attorney's employee, noting that in practice this frequently occurs but is not specifically provided in former Rule 113. Rule 114 as amended permits this practice limited to service on the employee at the attorney's office. See paragraph (B)(3)(a)(ii).[17]

The Committee also considered the practice in some judicial districts of assigning mail slots/boxes in the courthouse for service on members of the local bar and the court administrator. We agreed this practice was a legitimate manner of service as long as the courthouse mailboxes are not used to serve a party who does not have a box or who has not given their permission to be served in the box. Accordingly, paragraph (B)(3)(a)(iv) specifically permits service in courthouse mailboxes when counsel has agreed to receive service by this method.[18] Because of the confusion that occasionally arises when the Attorney General's office is prosecuting a case, see footnote number 7, and there are courthouse mailboxes, the Comment cautions that the Attorney General's office never may be served by this method.

In addition, the Committee discussed service by electronic means. We noted both that Pa.R.Civ.P. 236(d) permits service of orders by facsimile or electronic transmission, and that the use of electronic technology for transmitting documents is proliferating. However, the Committee expressed concerned about issues such as proof of service and signatures that arise with the various means of electronically transmitting documents. Following several meetings at which this issue was debated at length, the Committee ultimately concluded there is nothing in Civil Rule 236(d) that is contrary to the purposes of service in criminal cases and having uniform means of service in civil and criminal cases is a salutary purpose. Accordingly, Rule 114(B)(3)(a)(vi), modeled on Civil Rule 236(d), permits this method of service. To alleviate the members' concerns about service by electronic means, the new provision incorporates two safeguard provisions. First, the paragraph permits the use of electronic means of service, but only if counsel or, the defendant if unrepresented, requests this method of service either by filing a specific request or including the facsimile number or an electronic address on a prior legal paper filed in the case. The Comment includes a paragraph clarifying that the facsimile number or electronic address on letterhead is not sufficient to authorize service by facsimile. Second, the paragraph requires the authorization for the use of electronic means for service by the court to be on a case-by-case basis. A Comment provision explains this, and notes a new authorization must be made for each case of the attorney or defendant.

Paragraph (B)(3)(a)(vii) recognizes another practice in the judicial districts that has become readily available and widely used: using private delivery companies such as Federal Express or United Parcel Service or a local courier service to deliver documents. The new provision also accommodates the practice in some judicial districts

[15] The Committee uses the term "placed" instead of "filed" in the context of the criminal case file because the "filing" is the formal process of having documents come to the clerks' offices. The physical act of putting the documents in the criminal case file is not "filing" as used in this rule.

[16] A similar change has been added to Rule 576(B)(2)(a). See Part 7 below.

[17] A similar change has been added to Rule 576(B)(2)(b). See Part 7 below.

[18] Similar changes have been added to Rule 576(B)(2)(d) and (B)(3)(b). See Part 7 below.

of using a form of interoffice mail, which is a county-controlled delivery service of documents within the courthouse and to, for example, the county jail. The term "carrier service" is used to better accommodate not only the Federal Express and UPS-types of delivery services, but also the interoffice mail.

c. *Paragraph (C) (Docket Entries)*

Paragraph (C)(1) requires docket entries to be made promptly. This encourages the timely recording of docket entries, something that is a problem in some judicial districts.

Paragraph (C)(2) retains the requirements set forth in the second sentence of current Rule 114 that a docket entry be made of the date of service and the manner of service, paragraph (C)(2)(c). In addition, the requirement that a docket entry be made of the date on the order or court notice, paragraph (C)(2)(b), has been added because frequently this date will be different from the date of receipt, and this information could be important in the case. Finally, tying in with the requirement in paragraph (A)(1) that the orders and notices be time stamped when received in the clerk's office, paragraph (C)(2)(a) requires that a docket entry of the date of receipt be made.

The Comment includes a cross-reference to new Rule 113 for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

5. *New Rule 116 (General Supervisory Powers of President Judge)*

Throughout our discussions, a recurring issue for the Committee concerned the problems that arise because not all the court papers are filed in a timely manner, accurate docket entries are not always made or are not made promptly, and the service of orders and court notices is not always made in a timely manner. These problems impact on other Criminal Rules[19] and cause unnecessary delays in cases. From our research, the Committee noted the problems are exacerbated not only by the varied practices for handling these duties in the judicial districts, but also by the failure of some judicial districts to provide any uniform supervision.

The Committee discussed this matter at length and reviewed the constitutional and statutory authorization for clerks of courts. Sections 2756 and 2757 of the Judicial Code, 42 Pa.C.S. §§ 2756 and 2757, establish the duties of the clerks of courts. Section 2757 provides, inter alia, that the office of the clerk of courts shall have the power and duty to:

> (5) Exercise such other powers and perform such other duties as may now or hereafter be vested in or imposed upon the office by law, home rule charter, order or rule of court, or ordinance of a county governed by home rule charter or optional plan of government.

Based on this statutory provision and to address the problems with filing, making docket entries, and maintaining the criminal case file, the Committee in the published proposal included paragraphs in the proposed changes to Rules 113 and 114 that specifically authorized the president judge to supervise the clerk of courts.

We received numerous publication responses from clerks of courts and president judges criticizing these provisions. The respondents' criticisms included concerns that the proposal was usurping the statutory powers of the clerks of courts, and unduly and unnecessarily burdening the president judges by making them perform administrative functions. In discussing these responses, the Committee noted that the proposal was intended to provide a mechanism for oversight of the judicial district, not to take powers away from the clerks of courts or to make the president judges into court administrators. The proposal merely acknowledged what already is within the president judges' responsibilities—the responsibility for ensuring compliance with the rules and that the criminal justice system remains on track in their judicial districts.

In considering how to clarify this point, the Committee realized that the placement of the oversight provisions in the published proposal was likely the source of the confusion and contributed to the criticisms. Given the broad supervisory powers of the president judges, the Committee agreed it made more sense to have a separate general supervisory rule placed in the "Business of the Courts" section of the Criminal Rules (see Chapter 1 Part A). Accordingly, new Rule 116 enumerates the president judges' responsibility to ensure their respective judicial districts are in compliance with the Rules of Criminal Procedure, other rules, and statutes as they apply to the minor judiciary, courts, clerk of courts, and court administrators.

6. *Rule 575 (Motions and Answers)*

As part of our review of the motions rules in general, the Committee noted that the rule governing motions, current Rule 574, and rule governing answers, current Rule 575, are similar in nature and closely related in process: motions and answers are documents that a party files, have similar contents, and must be served. In view of this, Rules 574 and 575 have been combined into one rule by merging current Rule 574 into current Rule 575 as new paragraph (A).[20]

a. *Paragraph (A) (Motions)*

Rule 575(A)(1) is taken from former Rule 574(A). Rather than enumerating the laundry list of documents considered motions—motions, challenges, and applications or requests for an order or relief—each time there is a reference to "motions" in the rules, the term "motion" is now defined in Rule 103.[21] In addition, consistent with the Court's goal of statewide uniformity for motions procedures, the "except as otherwise provided by these rules" language has been deleted from paragraph (A)(1) because (1) there are no motions that would not be in writing, or as permitted by the court, or when made in open court during a trial or hearing,[22] and (2) the language could be misconstrued as permitting conflicting local rules. Finally, a cross-reference to Rule 1005 (Pretrial Applications of Relief) has been included in the Comment to make it clear that the practice in Municipal Court in which most motions are made orally is consistent with the provisions of Rule 575(A)(1).

Paragraphs (A)(2)(a)—(c) and (g) are the same as present Rule 574(B)(1)—(3). Paragraphs (A)(2)(e) and (f)

[19] See, for example, Rule 720(B)(3)(c) that requires the clerk of courts to "forthwith enter an order on behalf of the court, and shall forthwith furnish a copy of the order . . . to the attorney for the Commonwealth, the defendant(s), and defense counsel. . . ."

[20] Current Rule 574 has been rescinded and the number reserved for future use.

[21] The Rule 103 definition of "motion," and other changes to this Rule 103, are explained more fully in the Part 9 "Correlative Rule Changes" section below.

[22] A review of the Committee's Report and Supplemental Report explaining the changes when the motions rules were adopted in 1984 revealed that the two rules referred to in the Report that provided different filing procedures, or were the "otherwise provided" rules, have been rescinded and replaced by other rules that do not provide different procedures. From a search of the current rules, we found that Rules 573 and Rule 581 have provisions for making a motion "to the court." As explained below in the "correlative amendments" section, the Committee agreed to delete the provision from Rule 573 but retain it in Rule 581, with a Comment in both rules explaining that Rules 575 and 576 must be followed.

are new to the motions rule. Paragraph (A)(2)(e) adds the requirement that the motion include any requests for a hearing or argument or both, which is in accord with current practice. Paragraph (A)(2)(f) adds the requirement that the motion include a certificate of service. See discussion in Part 2 above.

A major change being proposed by the Committee is the abolition of rules to show cause and rules returnable in paragraph (A)(5). The Committee agreed these "rules" are confusing and no longer serve any useful purpose, and should be replaced by "plain language" notices of hearings issued by the court or court administrator as provided in Rules 114(c) and 557(A)(2). The basis for this change, that the terms "rules to show cause" and "rules returnable" are archaic and obsolete, is highlighted in the Comment.

b. *Paragraph (B) (Answers)*

Paragraph (B) incorporates the provisions of current Rule 575. The first sentence of current Rule 575(A) raised two questions. The first question was whether the "or otherwise provided in these rules" language was necessary. Because Rule 906(E)(1)(a), which requires an answer to all first counseled PCRA petitions in death penalty cases, is the only rule that requires an answer, the general exception has been deleted and a specific reference to Rule 906 has been added. See paragraph (B)(1).

The second question was whether the "ordered by the court" language could be construed as authorizing a judicial district to establish a local rule requiring answers in every case. In view of the potential for the phrase to be misconstrued, and to avoid any language that could be read as encouraging local rules, that portion of current Rule 575(A) (proposed paragraph (B)(1)) has been modified by replacing "ordered by the court" with "the judge orders an answer in a specific case as provided in Rule 577." This point is elaborated in the Comment, and a cross-reference to the filing and service requirements of Rule 114 has been added to emphasize that the orders must be filed and served, and docket entries made.

The Committee discussed the provision in the second sentence of current Rule 575(A) that failure to answer is deemed an admission when an answer has been required by the court or otherwise by the rules, and whether the Criminal Rules should ever permit the failure to answer to be deemed an admission. We concluded the "deemed admission" provision is a civil concept and could lead to problems in the criminal context, and therefore, a failure to answer should never be deemed an admission. Accordingly, the "unless an answer has been required" clause at the end of the second sentence of current Rule 575(A) (proposed paragraph (B)(1)) has been deleted. In view of this change, to make it clear the judge has other options to the "deemed admission" provision, a Comment provision explaining that the judge could impose other appropriate sanctions on the non-responding party in a specific case has been added.

Paragraph (B)(2) amends the provisions of current Rule 575(C) to clarify that if a hearing or argument is scheduled, a party may respond orally at the time of the hearing or argument even when an answer is not required.

Paragraph (B)(3), which is essentially the same as current Rule 575(D), has been modified by the deletion of the requirement that the answer "be divided into consecutively numbered paragraphs corresponding to the numbered paragraphs of the motion." See paragraph (B)(3)(b). Several members pointed out that answers may need to be less formally structured for a number of reasons, such as the answer may not respond to an entire motion or may raise other matters that do not correspond to the numbered paragraphs of the motion. The Committee agreed with this assessment, noting the provision is more mischievous than beneficial to the system, and that it makes sense to provide some flexibility in the nature of the answers in criminal cases.

Finally, paragraph (B)(3)(c) adds the requirement that the answer include a certificate of service, see discussion in Part 2 above.

7. *Rule 576 (Filing and Service by Parties)*

During the development of this proposal, the Committee agreed there should be a separate new rule addressing the procedures following the filing and service of motions, see discussion in Part 8 below. To accommodate this new rule, Rules 576 (Filing) and 577 (Service) have been combined into one rule, with current Rule 577 merged into current Rule 576 as new paragraph (B), because they are closely related in process.

The title to Rule 576 has been changed (1) to reflect the new dual nature of the rule—filing and service—and (2) to distinguish the requirements of this rule, which apply to parties, from the filing and service requirements of Rule 114, which apply to the court.

a. *Paragraph (A) (Filing)*

Paragraph (A) incorporates the provisions of current Rule 576. The order in which the paragraphs appear in the current rule has been reorganized so the method of filing, former paragraph (D), follows the requirements for filing in paragraph (A)(1).

Paragraph (A)(1) is similar to current Rule 576(A), with two changes. First, the "or otherwise provided in these rules" language has been deleted because the language could be misconstrued as permitting inconsistent local rules in this area. See also the discussion in Part 6 above.[23] Second, "written answers" has been added to the list of documents that must be filed to make the rules clear that the same requirements for filing motions apply to any answers. In addition, because Rule 575(A)(1) applies to "notices or documents for which filing is required," a cross-reference to the Criminal Rules that require a notice to be filed has been added in the Comment. This cross-reference will serve as an aid to the bench and bar by clarifying the scope of the application of this provision of the rule.

Paragraph (A)(2) incorporates current Rule 576(D), with two changes. First, the "may" has been changed to "shall" in the introductory clause to make the rule clear that these are the only ways to accomplish filing.[24] This clarification is intended to preempt local rules dealing with filing of motions. The second change is the addition of "except as provided by law" before the provision concerning the timeliness of filing. This addition, which is explained in the Comment, accommodates the "prisoner mailbox rule" recognized by the Court in *Commonwealth v. Jones*, 700 A.2d 423 (Pa. 1997).[25]

As the Committee worked on this proposal, the question of how to handle filings that are untimely or that do

[23] For the same reasons, this language has been deleted from paragraph (B), which is taken from current Rule 577(A).

[24] The same change has been made in paragraphs (B)(2) and (3) concerning methods of service.

[25] This is the "rule" developed in a line of cases to address the timeliness of appeals by prisoners proceeding pro se, holding that the prisoners' filings are timely when deposited with the prison authorities or in the prison mailbox within the time limits for filing. Although, to date, the case law has been limited to appeals and post conviction proceedings, the Committee reasoned that the basis for this "rule" put forth by the courts applies equally to criminal proceedings generally—that prisoners are unable to take the steps available to other litigants to monitor the process of their filings in order to ensure that the filings arrive before the deadline for filing.

not comply with the rules arose: should the clerk of courts have any role in determining the acceptability of filings. The Committee concluded that the determination of the acceptability of filings was not an issue for the clerk of courts, and that they should accept all filings submitted to their offices. Paragraph (A)(3) has been amended to make this clear, with further elaboration in the Comment. It also is suggested in the Comment that the judicial districts implement procedures to inform the filing party when the filing does not comply with the rules so the party may correct the problem. This procedure could be implemented, for example, by having a form that lists any local rules' requirements and the filing requirements that can be given to the party who is not in compliance. Paragraph (A)(3) also includes conforming changes to bring the case processing procedures in line with the provisions of new Rule 113.

Paragraph (A)(4), which governs the procedures when a represented defendant submits a document for filing, continues to generate questions. Correspondence with the Committee suggested that the 1996 amendments to Rule 576, which require the clerk of courts to forward any filings by a represented defendant to the defendant's attorney without docketing, has been creating problems, particularly in those cases in which the defendant is raising his or her attorney's ineffectiveness or is filing a petition to proceed pro se. The concern with the current procedure is that there is no record in the clerk's office of the filing. If counsel of record is not actively working on the defendant's case, then important deadlines may be missed, or action on the defendant's claim of ineffectiveness or to proceed pro se may be delayed.

The Committee initially agreed for ineffective counsel claims and petitions to proceed pro se that the filings should be docketed. However, after discussing how these two types of filings could be clearly separated from all other filings by counseled defendants, the Committee concluded this was not a workable option because many filings by defendants are not clearly identified, and it is not the responsibility of the clerk of courts to make a determination about the nature of a particular filing. In further discussions, the Committee weighed other options, including, for example, requiring that:

1) the clerk of courts docket and record all counseled defendant's filings in the same manner provided for other filings in paragraph (A)(3), and then forward it to the attorney of record;

2) the clerk acknowledge receipt of the filing at the same time forwarding the filing to the attorney, and the acknowledgment would provide the record or proof of filing;

3) the clerk also should forward a copy of the filing to the attorney for the Commonwealth in an effort to avoid day-of-trial surprises and delays; or

4) if the filing is docketed and recorded, no other action is required by the court.

Because (1) the concerns about delays and failure of counsel to act requires that there be some record of the filings by counseled defendants, and (2) the case processing procedures for time stamping, making a docket entry, and placing the document in the criminal case file make more sense than requiring the clerks to send an acknowledgment of receipt, and in order to avoid the day-of-trial surprises and delays that might otherwise occur, the rule requires the clerk to follow the same procedures when any document is submitted for filing—time stamp, make a docket entry, and place the document in the criminal case file—and forward a copy of the filing to the attorney for the Commonwealth. The Comment makes it clear, however, that these filings serve only to provide a record, and, therefore, no action is required.

Paragraph (A)(5) is new to the rules, and establishes the procedures for the judge to follow when a defendant submits a document pro se to the judge without filing it with the clerk of courts. Although not every document submitted to the judge by a defendant raises issues that require court action, if the document requests some form of cognizable legal relief, the document must be processed in accordance with Rule 576(A). Paragraph (A)(5) requires the judge to forward these documents to the clerk of courts for filing and processing. The Comment includes a further explanation about these procedures, including cross-references to paragraphs (A)(3) and (A)(4).

b. *Paragraph (B) (Service)*

Paragraph (B)(1), which is taken from current Rule 577(A), specifically requires the parties to serve not only all parties but also the court administrator. This additional requirement is necessary to address a problem that had come to the Committee's attention: some clerks of courts are not complying with the provision of current Rule 576(B) that requires them to promptly transmit a copy to the designated court official.[26] Because the court administrator frequently is the designated court official who schedules hearings and arguments, or who is responsible for getting the motions to the judge for scheduling, the Committee concluded the court administrator should receive a copy of all filings from the parties concurrently with filing. As noted in the Comment, this requirement does not replace the requirement that the documents must be filed with the clerk of courts.

Another purpose of providing for service on the court administrator is to acknowledge the variations in practice concerning who does scheduling in each judicial district. This one area of the rules in which there does not have to be complete uniformity—either the court or the court administrator may continue to schedule hearings and arguments and other court proceedings. This point also is explained in the Comment.

The Comment also suggests when a judge is assigned to a case, it is appropriate for counsel to give a courtesy copy of the motion to the judge. Although the court administrator is responsible for ensuring the judges receive copies of the motions, in some cases, the attorneys may want to provide the judges with a "heads up" on what is coming as a courtesy to the judge.

Paragraph (B)(2), which is taken from current Rule 577(B), provides the same methods of service that are in Rule 114 concerning service of orders and court notices. See discussion in Part 4 above. Briefly, the differences from current Rule 577(B) are that: paragraph (B)(2)(a) provides for personal service on the attorney unless the party is unrepresented; paragraph (B)(2)(b) permits service by personal delivery to the attorney's employee at the attorney's office; paragraph (B)(2)(d) acknowledges the local practice of using courthouse assigned boxes for receipt of service; paragraph (B)(2)(f) permits facsimile or other electronic means of service if the party's attorney has made a written request for this method of service; and paragraph (B)(2)(g) recognizes the common practice of using carrier services other than the U. S. postal service. The Comment includes a caveat concerning the election of service by facsimile transmission or other

[26] The last sentence in (A)(3), formerly Rule 576(B), has been deleted as no longer necessary because of the addition of this requirement.

electronic means.[27] Because of the relative novelty of electronic means of service, at least until the use of this means of service becomes more widely accepted, acceptance of this means of service by attorneys is limited to a per document basis, as explained in the Comment.

Paragraph (B)(3) has been added to enumerate the means of service on the court administrator: the means of service is limited to service by mailing; leaving a copy in a courthouse box or at the court administrator's office; facsimile or other electronic transmission, or carrier service.

Paragraph (B)(4) sets forth the requirements for the certificate of service that is discussed more fully above in Part 2.

Another issue the Committee considered at length concerned the application of Rule 576 to non-parties. Several members expressed concern that the addition of "by parties" to the title and using the term "parties" in the rule could be construed as limiting the application of the rule to parties, thereby excluding from the rule's requirement others who may make a motion in a specific case, such as a member of the press who is challenging, for example, a closure order. The Committee agreed anyone filing any form of request for relief in a criminal case, whether or not a party, should follow the requirements of Rule 576. New paragraph (C) to makes it clear that any non-party requesting relief from the court in a case must file and serve the motion as required by Rule 576(A) and (B). New paragraph (C), however, in no way is intended to give "party" status to a non-party filing and serving under the rule.

8. *New Rule 577 (Procedures Following Filing of Motion)*

As we developed this proposal, the Committee noted a gap in the rules following the filing and service of motions. The current rules do not set forth procedures that would explain what happens after the filing and service of motions. Because most of the changes are intended to reduce the statewide variations in motions practice and procedure, this gap has been filled by new Rule 577.

Rule 577 is divided into 3 parts: (A) procedures following the filing of the motion, including the determination by the court whether an answer is required and scheduling of hearing and arguments; (B) the requirement that the court promptly dispose of any motion; and (C) the "Unified Practice" section prohibiting local rules concerning personal appearance to request a hearing.

The provisions of paragraph (A) tie in with the provisions of Rule 114 to make it clear that when any order for an answer is issued pursuant to paragraph (A)(1), or any court notice for a hearing or argument is issued pursuant to paragraph (A)(2), the filing, docket entries, and service provisions of Rule 114 must be followed, and that this is the responsibility of the court, not the parties. Furthermore, although the Committee was adamant that hearings, oral arguments, and briefs should not be required in every case, but rather only should be scheduled when necessary to assist the judge in deciding the motion, as noted in Part 4 above in the discussion of Rule 114, the Committee was aware that in a number of counties, the hearings are scheduled by the court administrator as a matter of course. Accordingly, new Rule 577 permits either the court administrator or the judge to do the scheduling, leaving the decision to local practice, but on a case-by-case basis.

[27] When the service is by the court pursuant to Rule 114, the attorneys' election for service by fax or other electronic means is on a case-by-case basis.

9. *Correlative Rule Changes*

a. *Rule 103 (Definitions)*

Consistent with the changes being made to the motions rules and with new Rule 113, the definition of "clerk of courts" has been modified and a definition of "court administrator" added. Both definitions include the deputies or assistants when acting in the capacity of the clerk of courts or court administrator, and accommodate those judicial districts that use other titles for their "clerks of courts." In addition, as explained in Part 3 above, a definition of "motion" has been added, thereby eliminating the need to include the laundry list of documents that are motions every time the term "motion" is used in a rule. Finally, a definition of "carrier service," which includes not only the large national delivery companies, such as Federal Express and UPS, but also local carrier services and the interoffice mail systems that some judicial districts use to distribute documents within the courthouse and between the courthouse and other county facilities including the county jail facility has been added.

b. *Rule 573 (Pretrial Discovery and Inspection) and Rule 581 (Suppression of Evidence)*

To conform with the changes in Rules 575 and 576, and to avoid the misconstruction that Rule 573 provides an exception to the filing requirements of Rule 576(A), the provision for making an appropriate motion "to the court" has been deleted from Rule 573(A). Although similar language appears in Rule 581, "to the court" in Rule 581(A) has been retained because there are times when an suppression motion is made orally in open court and on the record, and this practice should continue. In addition, in paragraphs (C)(1)(a) and (b) "proof of service" has been changed to "certificate of service" to conform with the certificate of service provisions in Rules 575 and 576, and paragraph (E) has been amended to clarify that any hearing on a suppression motion must be scheduled pursuant to Rule 577.

Finally, cross-references to Rules 575 and 576 have been added to the Comments to Rules 573 and 581 to make it clear that both Rules 575 and 576 must be followed for any motions filed under Rules 573 and 581.

c. *"Show Cause" Rules*

Rules 142(A)(2), 456(B), 536(A)(1)(c), and 587 all use the phrase "show cause why." Although when these rules were developed, the Committee had not intended by using this phrase that the courts should require "rules to show cause," we have learned some judicial districts in fact require "rules to show cause" in these situations. In view of the Court's abolition of "rules to show cause," see Rule 575(A)(5), to avoid any confusion for the bench and bar, the "show cause" language in these rules has been deleted. In Rules 142, 456, and 536, the "show cause" provision has been replaced with "explain." In Rule 587, which is worded slightly differently and applies to the attorney for the Commonwealth, the entire "show cause" phrase has been deleted, and replaced with "respond."

d. *Changes to Conform Rules to New Rule 113 Terminology*

New Rule 113 changes the terminology in reference to (1) "docketing," now "making a docket entry," (2) the "docket," now referred to as "a list of docket entries," and (3) the "record," now referred to as the "criminal case file." Rules 103, 114, 535, 576, and 577, 720, 721, and

903[28] contain references to one or more of these terms that are changed in Rule 113 and have been modified to conform with the new Rule 113 terminology.

e. *Other Conforming Changes*

(1) Rule 572(A) provides for filing of the bill of particulars "subsequent to service upon the attorney for the Commonwealth." The motions rules always have required filing and service to be concurrent, and the Committee did not think Rule 572 should be different. Therefore this phrase has been deleted and "and served" added before "as provided in Rule 576."

(2) Rules 581(A) and 906(B) use the phrase "the defendant and the defendant's attorney." The Committee, when working on the motions rules package, agreed the references in the service provisions of the rules to "the defendant or the defendant's attorney" should be changed to "the defendant's attorney, or if unrepresented, the defendant." Consistent with this decision, Rules 581(A) and 906(B) have been amended.[29]

(3) Rules 303 and 579 and the Comments to Rules 451 and 720 have been modified to conform the references to rule numbers that have been changed as part of the motions rules package.

[Pa.B. Doc. No. 04-468. Filed for public inspection March 19, 2004, 9:00 a.m.]

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

1. File seven (7) certified copies of this Administrative Order with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Clerk of Court's Office.

By the Court

RICHARD W. WEBB,
President Judge

[Pa.B. Doc. No. 04-469. Filed for public inspection March 19, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

Accelerated Rehabilitative Dispositions Program (ARD)—Administrative Fee; 34 MI 99

Administrative Order No. 8-2004

And Now, this 4th day of March, 2004, in order to implement the new DUI legislation and administer the ARD Program, it is hereby

Ordered and *Decreed* that, effective May 1, 2004, all parties placed into the Carbon County Accelerated Rehabilitative Disposition Program shall be assessed an Administrative Fee as follows with 50% of the fee payable on or before the scheduled ARD hearing date:

Non-DUI ARD	$350.00
DUI ARD—Rate of Alcohol .08 to .099	$350.00
DUI ARD—Rate of Alcohol .10 to .159	$400.00
DUI ARD—Rate of Alcohol .16 and higher and Refusal	$450.00
ALL ARDs not stipulated to at District Justice level	$500.00

It Is Further Ordered and Decreed that this Court's Administrative Order No. 7-1999 is *Vacated* as of April 30, 2004.

[28] Rule 903 also is being amended to conform it to the new provisions in Rules 114 and 576 that require documents that are filed to be time stamped, have docket entries made, and placed in the criminal case file.

[29] Although Rules 320 and 555 use the phrase "defendant or defendant's attorney", the Committee had questions about the validity of other provisions of these rules, and rather than delay the motions rules proposal during the discussion of these other provisions, the Committee agreed to take these rules out of the motions rules package and consider them separately. Rule 905(C) requires service of an order for an amendment of a PCRA petition to be on the defendant, defendant's attorney, and the attorney for the Commonwealth. The Committee agreed in this case, service on both the defendant and the defendant's attorney was necessary, and therefore Rule 905(C) should not be changed.

JUNIATA AND PERRY COUNTIES

Education Program for Separated Parents; No. 73 of 2004; No. 2004-2

Order

And Now, March 1, 2004, it is hereby ordered that beginning with case filings dated May 1, 2004, all parties in a divorce or custody/visitation action, or such other cases as the Court shall direct, where the interest of children under the age of 18 years are involved, shall be required to attend a seminar entitled "Education Program for Separated Parents." The four-hour educational seminar is intended to provide guidance to the parents in helping their children adjust to the consequences of divorce, separation and changing custody arrangements. A detailed description of the program goals are entitled Exhibit "A" and incorporated in this Order.

The moving party shall serve the responding party with a copy of the Court Order directing their attendance at the Seminar within sixty days of the date the action is filed along with a program brochure/registration form.

Within sixty (60) days after service, both parties are required to register and attend the program by mailing the pre-printed "Education Program for Separated Parents" registration form, along with a registration fee of $45.00 to Education Program for Separated Parents, Penn State Justice and Safety Institute, The Pennsylvania State University, 305 Lubert Building, Innovation Park at Penn State, University Park, PA 16802-7009.

Failure to register and complete the Program will be brought to the attention of the Court and may result in a finding of contempt and the imposition of sanctions.

By the Court

C. JOSEPH REHKAMP,
President Judge

Education Program for Separated Parents

Program Goals

"Education Program for Separated Parents" will provide parents with information, support and direction that will facilitate a healthy adjustment for their children. Bitterness often ensnares children caught between separating parents. In an effort to reduce the emotional toll on children and limit acrimony, attendance at this four-hour educational seminar is required by the Court of all parties in all divorce, custody, visitation and in such other cases as the Court shall direct, where the interests of children under the age of 18 years are involved and the Court deems the parties will benefit from such a program. This program will also be open to any other person who is involved in caring or educating children and wishes to attend on their own. Administration of this program will be through the Penn State Justice and Safety Institute in conjunction with the Court Administrator's Office.

Program Content

The four-hour program provides parents with information about the developmental stages and needs of children with emphasis on fostering the child's emotional health during periods of stress. The program is informative, supportive and will inform parents of various community resources. Topics will also include typical reactions of families, stress indicators in children, pitfalls to avoid, skills to help children work through stress, and how to work out a parenting agreement.

"Exhibit A"

When

The program will be presented every few weeks as indicated on the brochures alternating between Wednesdays and Saturdays.

Where

The program is presented in Perry County at the Courthouse in Courtroom 1, New Bloomfield, PA or in Juniata County at the Library on 498 Jefferson Street, Mifflintown, PA.

Attendance

Attendance at the program is required of all parties involved in a divorce, custody, or visitation action and in such other cases as the Court shall direct, where the interests of children under the age of 18 years are involved and the Court deems the parties will benefit from such a program.

A waiver of attendance will be provided for individuals who have attended a program of equal value. A certificate of attendance at a similar program must be presented to Court Administration.

Fees

A fee of $45.00 per party is required and should be sent in with the registration form payable to "Education Program for Separated Parents," and mailed to Penn State Justice and Safety Institute, The Pennsylvania State University, 305 Lubert Building, Innovation Park at Penn State, University Park, PA 16802-7009. The cost will cover the presenter's fees, handouts, and program administration. Penn State will determine whether any fee will be reduced or waived.

Presenters

The presenters are provided by Penn State and have at a minimum master's degree with additional training.

Application Process

Upon initiation of a filing, the moving party shall serve the responding party with a copy of the Court Order directing attendance at the seminar and provide a program brochure/registration form about the program. The brochure will describe the registration and payment methods and include a registration form to be completed and mailed. These documents will be served along with the pleading. Registration will be by mail as indicated on the form and must be made no later than one week before the selected program date. The registration process is designed to maximize safety to the participants. For safety purposes, participants are asked to indicate if they prefer not to attend the same seminar as the other parent. Parties are encouraged to attend a class in the County in which the action is pending, however other classes are held in Juniata and Mifflin Counties for your convenience.

Verification

A list of all parties participating in the program will be provided to the Court prior to each session. Upon completion of the seminar, each parent will receive the original certificate verifying that they have attended the course. A copy of the certificate will be sent by Penn State to Court Administration to be placed in the official Court file.

Monitoring and Evaluation

Each participant will complete a written evaluation of the seminar at its conclusion, indicating their individual assessment of the value of the program and any suggestions for future programs.

[Pa.B. Doc. No. 04-470. Filed for public inspection March 19, 2004, 9:00 a.m.]

JUNIATA AND PERRY COUNTIES

Rules of Civil Procedure 1915.15, 1919, and 1920.12; No. 73 of 2004; No. 2004-2

Order

And Now, March 1, 2004, the Court hereby adopts the following Rule of Civil Procedure to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and one (1) certified copy to the Domestic Relations Committee.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary/Clerk of Courts Office.

By the Court

C. JOSEPH REHKAMP,
President Judge

Rule 1915. Custody

Rule 1915.15 Form of Complaint.Order.

(1) In addition to the information required by Pa.R.C.P. 1915.15, every complaint for Custody, Partial Custody, Visitation or Modification shall contain one of the following averments:

A. Plaintiff has been advised of the requirement to attend the seminar titled "Education Program for Separated Parents" offered by Penn State.

or

B. The parties have previously attended the "Education Program for Separated Parents" program as evidenced by certificates of attendance contained in the official court file to the following referenced case number_____ and/or verification of certificate attached hereto.

(2) The Order and Notice shall also include the following:

A. "The Court directs that within sixty (60) days after service, both parties shall register and attend the program by mailing the pre-printed "Education Program for Separated Parents" registration form, along with a registration fee of $45.00 to Education Program for Separated Parents, Penn State Justice and Safety Institute, The Pennsylvania State University, 305 Lubert Building, Innovation Park at Penn State, University Park, PA 16802-7009."

or

B. "The parties have previously attended the "Education Program for Separated Parents" as evidenced by certificates of attendance in the official court file to the following referenced case number _____."

Rule 1919. Mandatory Seminar for Separating Parents

1. In all divorce and custody proceedings filed on or after May 1, 2004, and in such other cases as the Court shall direct, where the interests of children under the age of 18 years are involved, the parties shall, within sixty (60) days of the date a claim is filed, attend a four-hour mandatory seminar entitled "Education Program for Separated Parents."

2. In all custody/visitation proceedings filed on or after May 1, 2004, each Notice Order and complaint shall include the additional information in accordance with Perry or Juniata County Civil Rule 1915.15.

3. In all divorce proceedings filed on or after May 1, 2004, where the parties have a child or children under the age of eighteen years, every complaint shall contain the additional information required by Perry or Juniata County Civil Rule 1920.12. It shall also have attached thereto an Order directing attendance at the Seminar in the form set forth in Perry or Juniata County Civil Rule 1920.12(3).

4. The moving party shall serve the responding party with a copy of the Court Order directing attendance at the Seminar at the time a divorce complaint is served. A program brochure/registration form shall also be provided by the moving party to the responding party at the time of service of the complaint. A supply of said brochure/registration forms can be obtained in the Office of the Prothonotary or Court Administrator.

5. The affidavit of service shall include a statement that the opposing party was advised of the requirement to attend the "Education Program for Separated Parents" and served with the registration form.

6. Within sixty (60) days after service, both parties are required to register and attend the program by mailing the pre-printed "Education Program for Separated Parents" registration form, along with a registration fee of $45.00 to Education Program for Separated Parents, Penn State Justice and Safety Institute, The Pennsylvania State University, 305 Lubert Building, Innovation Park at Penn State, University Park, PA 16802-7009. Any requests for waiver or reduction of attendance fee can only be granted by Penn State.

7. Court approval is required for an extension of time to complete the seminar. Said requests for extension shall be made in writing and forwarded to Court Administration.

8. Failure to register and complete the program will be brought to the attention of the Court and may result in a finding of contempt and the imposition of sanctions.

Rule 1920. Actions in Divorce or Annulment

Rule 1920.12 Complaint

1. In addition to the information required by Pa.R.C.P. 1920.12, every Complaint in Divorce shall contain one of the following averments:

a. Plaintiff avers that there are no children under the age of eighteen (18) years born of the marriage; or

b. Plaintiff avers that there are children under the age of eighteen (18) years born of the marriage namely, to wit: (list names and dates of birth.)

2. If there are children under the age of eighteen (18) years born of the marriage, the complaint shall include one of the following averments:

a. Plaintiff has been advised of the requirement to attend the seminar "Education Program for Separated Parents;" or

b. The parties have previously attended the "Education Program for Separated Parents" as evidenced by certificates of attendance contained in the official court file to the following referenced case number (*list case number.*)

3. In the event there are children under the age of eighteen (18) years of age born of the marriage, and there is no averment that the parties previously attended the "Education Program for Separated Parents," the divorce complaint shall have attached thereto, an order in substantially the following [order] form:

	:	IN THE COURT OF COMMON PLEAS
VS.	:	OF THE 41ST JUDICIAL DISTRICT
	:	(INSERT) COUNTY, PENNSYLVANIA
	:	NO.

ORDER OF COURT

AND NOW, _____, the Court directs that within sixty (60) days after service, both parties shall register and attend the program by mailing the pre-printed "Education Program for Separated Parents" registration form, along with a registration fee of $45.00 to Education Program for Separated Parents, Penn State Justice and Safety Institute, The Pennsylvania State University, 305 Lubert Building, Innovation Park at Penn State, University Park, PA 16802-7009.

BY THE COURT:

_____

cc: Plaintiff
Defendant
Court Administration

[Pa.B. Doc. No. 04-471. Filed for public inspection March 19, 2004, 9:00 a.m.]

WESTMORELAND COUNTY

Rule of Criminal Procedure WC600; No. 3 of 2004

Order

And Now this 26th day of February, 2004 it is *Hereby Ordered* that Westmoreland County Rule of Criminal Procedure WC600 is rescinded.

By the Court

DANIEL J. ACKERMAN,
President Judge

[Pa.B. Doc. No. 04-472. Filed for public inspection March 19, 2004, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated March 8, 2004, Charles Stephen Bartolett is suspended from the practice of law in this Commonwealth for a period of six months, effective April 7, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 04-473. Filed for public inspection March 19, 2004, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Michelle Hamilton Davy having been suspended indefinitely from the practice of law in the State of Maryland, the Supreme Court of Pennsylvania issued an Order dated March 8, 2004 suspending Michelle Hamilton Davy from the practice of law in this Commonwealth consistent with the Order of the Court of Appeals of Maryland dated September 8, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 04-474. Filed for public inspection March 19, 2004, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated March 8, 2004, Samuel A. Malat is suspended from the practice of law in this Commonwealth for a period of three months, to run consecutive to the suspension imposed by this Court on November 24, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 04-475. Filed for public inspection March 19, 2004, 9:00 a.m.]